

ordered. And it is further ordered, that this case be and the same is hereby referred to the auditor with directions to state an account accordingly.

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In obedience to this order the auditor reported a distribution of the surplus of the proceeds among twelve of the creditors of the deceased, nine of whom had come in under the order of the 14th of March ; which distribution of the auditor was confirmed, and the trustee directed to apply the proceeds accordingly, on the 28th of August 1828, and the whole case so finally closed.

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### FORNSHILL v. MURRAY.

The contract of marriage is the parent, not the child of civil society. If valid where celebrated, it is valid every where. It cannot be cast off at the pleasure of the parties. It must here be solemnized in the face of a church or with the blessing of a clergyman. General reputation, or proof of cohabitation as husband and wife, is, in general, sufficient evidence of a contract of marriage.

The county courts may inquire into the validity of certain marriages.

The Court of Chancery may award alimony ; and it may also declare a marriage to be void which has been procured by abduction, terror, and fraud.

No judicial proceeding can be had after the death of either party for the purpose of having their marriage declared void, or of bastardizing any one after his death. But where the validity of an alleged marriage, or the legitimacy of any one forms a necessary link in the chain of title to the property in question, there such validity or legitimacy may be inquired into and determined, either by a court of law, or of equity. It is not indispensably necessary in any case to make up an issue to have the facts ascertained by a jury.

This bill was filed on the 31st of January 1827, by *John Fornshill* and *Ann* his wife, *Alexander M. Williams* and *Sarah* his wife, *Andrew Fulton*, and *William Fulton* an infant by *Andrew* his next friend, against *William V. Murray* surviving administrator *de bonis non* of *Henry Somervell*, and *William Hubbard* administrator of *Thomas Somervell*.

The bill states, that *Mary*, the sister of *Henry*, by her first marriage with *Andrew Davidson* had issue the plaintiffs *Ann* and *Sarah*, and by her second marriage with *William Fulton* had issue the plaintiffs *Andrew* and *William* ; that she died leaving these four children ; that, some time after her death, *Henry* died intestate without leaving a widow or any children, or the descendant of any